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Supreme Court, U.S.
FILED
FEB 8 1993
OFFICE OF THE CLERK

No. 92-551

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

JACK F. KEMP, SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, et al.,
Petitioners,

v.

ALPINE RIDGE GROUP, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF SOUTHWIND ACRES ASSOCIATES, SOUTHGATE VILLAGE APARTMENTS AND OTHER CLASS MEMBERS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICI CURIAE

Southwind Acres Associates and Southgate Village Apartments are owners of housing projects which fall under Section 8 of the United States Housing Act of 1937 as amended, 42 U.S.C. §1437(f) ("Section 8"). These limited partnerships are plaintiffs in an action pending in the United States District

Court for the Eastern District of Oklahoma styled Southwind Acres Associates, a Limited Partnership; and Southgate Village Apartments, a Limited Partnership, Plaintiffs vs. Jack F. Kemp, et al., (HUD), Defendants, Case No. CIV-91-125-C. The issues involved in this action are identical to those in this appeal, challenging the constitutionality of Section 801 of the National Housing Act. This action is stayed pending this appeal. The remaining Amici Curiae (identified in Appendix "A") are Section 8 project owners with projects located throughout the United States, in judicial districts in addition to the Ninth Circuit, represented by the same co-counsel for Southwind Acres Associates and Southgate Village Apartments in the Eastern District of Oklahoma. Further, the additional Amici Curiae are members of the class and group of plaintiffs in

that certain class action pending in the United States District Court for the District of Nebraska styled Federal Housing Partners IV Limited Partnership, an Iowa Limited Partnership, et al., Plaintiffs vs. Jack Kemp, Secretary of the United States Department of Housing and Urban Development, et al., Defendants, Civil Action No. 89-0-812. This action is also stayed pending this appeal.

The Amici Curiae have a strong interest in the issue of the constitutionality of Section 801 of the National Housing Act because the resolution of this issue will determine their contract rights pursuant to their Housing Assistance Payment Contracts with HUD.

SUMMARY OF ARGUMENT

1. Pursuant to Section 8 of the National Housing Act, private developers contracted with HUD to construct unique housing which would only be viable through HUD's subsidization of the rent the tenants were able to pay. To induce the developers to construct the projects, HUD included provisions in their Contracts with the developers which would protect the owners from future economic uncertainties. HUD promised to adjust the rents in the projects in accordance with published rent adjustment factors promulgated by HUD.

2. Although HUD was statutorily empowered to use either "fair market rental" adjustments or adjustments based on published factors, HUD contracted to use the objective, hassle-free factor adjustments for which the project owners bargained. From 1974 through 1980, HUD

adjusted the contract rents through the use of the Automatic Annual Adjustment Factors just as both parties had intended and contracted.

3. When HUD and Section 8 project owners entered into HAP Contracts in 1974, all parties bargained for and intended that the rents would be adjusted based on Automatic Annual Adjustment Factors, which would be published at least annually in the Federal Register. The Automatic Annual Adjustment Factors would be the sole means for determining rent adjustments. However, after a period of seven (7) years, HUD unilaterally amended the terms of the contract by using comparability studies as an independent method of determining rent adjustments, thereby abandoning the agreed upon formula as the sole means of adjusting contract rents. HUD had no authority to unilaterally amend the

contracts by imposing additional methods of adjusting contract rents.

4. The court in Rainier View Associates v. United States Department of Housing and Urban Development, 848 F.2d 988 (9th Cir. 1988) cert. denied, 490 U.S. 1066 (1989), properly interpreted the HAP Contracts as the parties intended when they were executed. HUD elected the option to adjust the rents based on a reasonable, published formula and incorporated this option into the form contract which it drafted. Rainier View's interpretation of section 1.9(d), the overall limitation provision of the contract, was proper and must not be disturbed. It found that Section 1.9(d) did not give HUD the authority to adjust the contract rents by unilaterally imposing comparability studies as one of the means to determine the rent. The interpretation of the overall limitation

provision which HUD urges this Court to adopt completely ignores the intent of the parties which existed when they entered into HAP Contracts in 1974.

5. Section 801 of the Housing Reform Act, 42 U.S.C. 1437f(c)(2)(C) (Supp. II, 1990), passed at the request of HUD, was enacted to save the Government money after the court in, Rainier View, declared that HUD's use of comparability studies as an independent basis to determine contract rents was contrary to the intent and bargained for terms of the HAP Contracts. The Alpine Ridge Group, et al. v. Jack F. Kemp, 955 F.2d 1382 (9th Cir. 1992), holding that Section 801 is unconstitutional, as it alters, retroactively and prospectively, agreed upon and bargained for contract obligations of HUD merely to save money is proper and should not be disturbed. That holding is consistent with Lynch v.

United States, 292 U.S. 571 (1934), which held that Congress cannot abrogate contractual obligations of the Government simply to save money. Since the sole reason for Section 801 was to save money, it must be held unconstitutional and the decision being reviewed by this Court must be affirmed.

ARGUMENT

1. **The Background.** In 1974, Congress enacted Section 8 of the National Housing Act[1] to induce private developers to build and operate rental housing for elderly, handicapped and poor tenants. HUD sought private developers to design, construct and operate these Section 8 projects. These were risky ventures to the developers, however, and in order to induce developers to participate in the program, HUD gave

[1] 42 U.S.C. §1437(f)

assurances to these owners in their contracts (Housing Assistance Payment or "HAP" Contracts) that the full faith of the federal government stood behind its obligations.[2]

To further convince private developers to participate in these high risk projects, the HAP Contracts provided for automatic annual rent adjustments to be applied to determine contract rents due to the owner from HUD. These adjustment factors were material and critical to the project owner's decision to participate in Section 8 subsidized housing project ventures.

In the Federal Housing Act, Congress provided HUD with two (2) mechanisms for determining rent adjustments, set forth

[2] 1.6 Government Assurances To Owner. The execution of this agreement by the government signifies that the faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the contract and that funds have been obligated by the government for such payments.

in subsection (c)(2)(A) of Section 8:

> The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units, or if the Secretary determines, on the basis of a reasonable formula. (Emphasis added).

These methods were the only statutorily authorized ways in which HUD could adjust contract rents to be paid to project owners. The term "comparability studies" is absent from the governing Section 8 Statute.

2. **The Parties Intended To Utilize the AAAFs As the Sole Method Of Adjusting Contract Rents.** Based on this statutory authority, HUD could have chosen either of these methodologies to form a part of the bargain when contracting with Section 8 project owners regarding the subject of annual rent adjustments. HUD chose the

latter of the two (2) options presented by subsection (c)(2)(A), that of a reasonable formula. This reasonable formula approach, chosen and standardized by HUD, became the Automatic Annual Adjustment Factors (AAAFs) found in Section 1.9b of the HAP Contracts, which provides in pertinent part:

> (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register....
>
> (2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Factor most recently published by the Government.

Thus, when project owners were presented with the opportunity to enter

into HAP Contracts drafted by HUD[3] setting forth the basis upon which they would receive annual rent adjustments, these owners relied upon:

> (1) HUD had agreed not to determine annual rent adjustments based on fair market rentals in the housing area for similar types and sizes of dwelling units; and
>
> (2) HUD had agreed to provide automatic rent adjustments by virtue of specific, defined factors which would be published in the Federal Register, at least annually.

HUD marketed the Section 8 program with an emphasis on the fact that rents would be adjusted by use of these published, automatic adjustment factors as opposed to an arbitrary or subjective case-by-case basis.

It has been established by the

[3]Contracts should be construed less favorably against the drafter. United States v. Seckinger, 397 U.S. 203, 210 (1970). This principle applies to the government because of its vast economic resources and stronger bargaining position in contract negotiations. Id., P. 216.

Respondents in this case, and it is also true for amici curiae, that their decision to undertake Section 8 project construction, maintenance and operation was based in major part on the manner in which their contract rents were to be adjusted. These parties relied on the representations of the Government and the language of the HAP Contracts themselves, both of which stated to these project owners that their rents would be determined by use of AAAFs, in reaching their decision to enter into Section 8 construction projects and contracts.

In addition to the project owners' intent and belief that the contract rents were to be adjusted by AAAFs, from 1974 to 1981 HUD adjusted contract rents in this manner. At the inception of this program, HUD apparently had neither intention nor belief that the use of "comparability studies" or other outside

or subjective factors would come into play to alter or determine contract rents.

HUD's construction of the applicable provisions of the HAP Contracts was the same as the project owners. This fact is evidenced by:

> (1) The strongest indication of what the parties actually bargained for in Section 1.9 of the HAP Contracts, is that HUD did in fact determine and adjust contract rents annually by operation of AAAFs from 1974 through 1980. This constitutes a course of performance and dealing between the parties which is the best indicator of what the intention of the parties was with regards to the contract;[4]
>
> (2) HUD specifically stated and represented to prospective Section 8 project owners in marketing the program that this was HUD's understanding of how rents were to be adjusted;
>
> (3) When HUD first amended its form contract, it used the same language formerly found in

[4]Restatement (Second) Contracts §202 comment g.

> section 1.9(b) of the original contracts in its new contracts, codified as section 1.8(b).[5]; and
>
> (4) HUD's own agency regulations in effect at the time provided that contract rents would be determined by use of AAAFs.[6]

For the first seven (7) years of the performance of Section 8 HAP Contracts between the parties there was no indication that HUD's perception of its promises or its intentions with regard to these projects was any different than the

[5]Automatic Annual Adjustments. (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families. (2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

[6]24 C.F.R. §888.203(b), 41 Fed. Reg. 49440 (1976).

project owners.

3. **HUD Abandoned Agreed Upon Formula as the Sole Method to Determine Contract Rents.** In 1981, HUD abandoned the AAAFs as the sole method of determining contract rents, by virtue of the utilization of "comparability studies" to place a cap or limitation on rents provided in the HAP Contracts. HUD claims that the use of these comparability studies was authorized to prevent the occurrence or existence of material differences between the rents of Section 8 projects and comparable unassisted units.[7] The jurisdictional papers show that HUD's use of comparability studies, which were not authorized by statute, regulations or the contracts, had far different effects. Rather than simply preventing material

[7]HUD Brief, Page 17.

differences in rents between assisted and unassisted units, HUD's use of comparability studies actually tampered with and eroded the bargained for differences in rents which existed at the time of the contracts between the assisted and unassisted units.[8] For example, the jurisdictional papers show that HUD, and the contracts, recognized that there would be a disparity between the assisted contract rents of the Section 8 project owner and unassisted units in the area. The HAP Contracts, in section 1.9(d), specifically recognize this disparity and prohibit HUD from tampering with or altering this relationship between assisted and unassisted rents over the life of the contracts. Section 1.9(d) provides in pertinent part:

[8]Respondent Alpine Ridge Group Brief, Page 36.

> "This limitation (the overall limitation clause) shall not be construed to prohibit differences in rents between assisted and unassisted units to the extent that such differences may have existed with respect to the initial contract rent."[9]

These provisions of the HAP Contracts, properly harmonized, result in the inescapable conclusion that the provisions were designed to operate in such a manner that the overall limitation provision was not to be imposed as a vehicle to eliminate all differences between unassisted rents and assisted rents in a given area. HUD's use of the comparability studies and the overall limitation provision of section 1.9 violates the intent, spirit and letter of the HAP Contracts.

4. Rainier View Decision Properly Construed Meaning of Contracts And Intent

[9]HAP Contracts, Section 1.9(d).

of Parties. Following HUD's unilateral decision to determine contract rents by utilization of comparability studies as an independent limitation on contract rents, project owners in the Western District of Washington challenged this procedure in the Rainier View case.[10] Regarding the intention of the parties to the HAP Contracts and the meaning of the significant provisions, Rainier View found that:

> (1) The overall limitation provision of Section 1.9(d) is not an independent basis for making annual rent adjustments;
>
> (2) In the HAP Contracts, HUD elected the formula method (AAAFs); and
>
> (3) HUD's utilization of comparability studies to enforce its construction of the overall limitation provision would make all rent adjustments depend on the market survey method, contrary to the language of the contracts

[10]848 F.2d 988 (9th Cir. 1988), cert. denied, 490 U.S. 1066 (1989).

agreed upon by the parties.

Rainier View found that HUD's interpretation of the overall limitation provision of the HAP Contract is contrary to the intention expressed in the contract language itself and the purpose of the overall limitation provision found in HUD's regulations.[11] As found by Rainier View, the proper use of the overall limitation provision and those comparability studies used in conjunction therewith could only be to establish separate AAAFs or revise AAAFs in effect for that particular area. The interpretation of the contract provisions found by Rainier View had as its basis primarily the expressed intention of the parties, based on the factors previously discussed herein. The contract language and the intent of the parties was not to

[11]24 C.F.R. §888.204 (1987).

allow HUD to unilaterally impose additional methods of adjusting rents. The parties did not intend for HUD to abandon the AAAFs, as the sole method of adjusting rents by the use of comparability studies as an independent basis for making rent adjustments. As the Rainier View Court stated, at page 991:

> "that is clear from the contract language and is consistent with the statutory language and HUD's own regulations interpreting the Statute."

5. **Following The Rainier View Decision Congress Enacted Section 801 To Save Money.** The effect of the Rainier View decision upon HUD and upon Congress was great indeed. HUD did not believe that Rainier View was correctly decided.[12] Based on its opinion that Rainier View was wrongly decided, HUD

[12]HUD Brief, Page 8

made the decision not to apply its ruling outside the Ninth Circuit.[13] Section 8 project owners demanded treatment in accordance with the mandate of Rainier View. HUD refused to do so. The prospect of additional litigation and massive payments of unpaid contract rents per the original contract terms loomed large. To avoid the performance of its obligations and to obtain a cure for this problem, HUD sought the assistance of Congress. This assistance was provided by Congress and took the form of Section 801 of the Reform Act.[14] The provisions of Section 801 and its prospective and retrospective aspects are thoroughly discussed in the jurisdictional papers. HUD, in its Brief, describes and

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[13] Id.

[14] Pub.L. No. 101-235, 103 Stat. 2057-2059, (codified at 42 U.S.C. 1437f(c)(2)(C) (Supp. II, 1990) and 42 U.S.C. 1437 Note (Supp. II, 1990).

characterizes Section 801 as curative legislation enacted for several laudable purposes including: (1) to restore uniform and appropriate procedures to govern rent adjustments; and (2) to ensure a reasonable rate of return to the owners' while effecting the original Congressional objective of avoiding excessive rents and rates of return for Section 8 projects.[15]

HUD asserts that these goals were to be achieved by Section 801 by prescribing new procedures for calculating rent adjustments, both retrospectively and prospectively. While this sounds nice, what HUD fails to focus on is that "new procedures for calculating rent adjustments both retrospectively and prospectively" means that the bargained for and intended provisions of the HAP

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[15] HUD Brief, Page 8.

Contracts were being abrogated in a wholesale fashion which resulted in:

> (1) the deprivation of bargained for contract rights;
>
> (2) payment of rents to Section 8 owners less than bargained for and anticipated; and
>
> (3) discretion and ability in HUD to alter annual contract rents by arbitrary and subjective measures for the duration of the terms of the HAP Contracts.

In reality, as established in the district courts in summary judgment proceedings in both Alpine Ridge[16], and Acacia Villa[17], Congress's enactment of Section 801 was primarily an attempt to save the Government money which it would otherwise have to pay Section 8 project owners to honor the statutory and contract provisions governing HAP Contract rent adjustments. Ample

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[16]764 F.Supp. 1393 (W.D. Wash. 1990).

[17]774 F.Supp. 1240 (C.D. Cal. 1990).

evidence exists that the real purpose of Section 801 was to save Congress money. Senator D'Amato stated that "the Bill reduced the loss to $210 million, a savings of over $390 million".[18] Senator Sasser, Chairman of the Budget Committee, was quoted as saying in the Congressional Record[19], "by moving quickly to enact this legislation with its 'Rainier View fix' we could save the Government hundreds of millions if not more than a billion dollars." The Chairman of the Housing Subcommittee, Representative Gonzalez, illustrated that Section 801 would reduce retroactive costs $210 million and reduce prospective costs to $500 million over the next ten (10) years.[20]

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[18]135 Cong. Rec. S 16602 (November 21, 1989).

[19]135 Cong. Rec. S 16607 (November 21, 1989).

[20]135 Cong. Rec. H 9686 (November 21, 1989).

In contrast to the characterization of Section 801 advanced by HUD in its Brief, these comments aptly illustrate that Section 801 was intended to shift the burden of HUD's use of comparability studies from Congress and the people squarely to the backs of the individual Section 8 project owners whose rents were adjusted by use of these vehicles. For it is clear that if Congress is successful in reducing its rent obligations by virtue of Section 801, Congress will save money it would otherwise be obligated to pay individual project owners under the mandate of Rainier View. Congress intended to save a loss of $2 billion according to Secretary Kemp in a letter to Congress.[21]

Section 801's attempt to save money should not be permitted by this Court for

[21]135 Cong. Rec. H 9688 (November 21, 1989).

a number of reasons. Of primary importance, Section 801 abrogates the intention of the parties and the clear meaning of the contracts. The intention of the contracting parties should always be given the meaning ascribed to the contract by the parties at the time the contract was entered into.[22] The contract has been found to be unambiguous in its meaning in the Rainier View decision. The fact the Congress and HUD disagreed or were unhappy with the Rainier View decision provides no basis for vitiating the parties' intentions upon entering into these contracts. HUD's Brief cites no cases and does not seriously contend that Congress has the power to abrogate its contractual obligations in contracts between the Federal Government and private parties

[22]Williston on Contracts, 3rd Ed. §601 at p. 306.

simply because it disagrees with the ruling of a court or does not enjoy the sting of the obligation. To the contrary, this Court has held in Lynch v. United States,[23] that "Congress was without power to reduce expenses by abrogating contractual obligations of the United States." This Court has also noted in Bowen v. Public Agencies Opposed to Social Security Entrapment,[24] that Congress is without power to repudiate its own debt simply in order to save money. The Lynch and Bowen cases were dispositive of this issue in the Ninth Circuit's opinion in Alpine Ridge.[25] In Alpine Ridge, Section 801 was correctly seen as an attempt to save money rather than true curative legislation as

[23]292 U.S. 571 (1934).

[24]477 U.S. 41, 54-55 (1986).

[25]955 F.2d 1382 (9th Cir. 1992).

follows:

> This is not a case where Congress alters the effect of a court decision by amending a statute. Through section 801, Congress has attempted to change section 8's original meaning retroactively, 14 years after its enactment. The fact that Congress does not recognize its obligation under the contracts as interpreted by Rainier View does not affect the validity of the owners' rights, or Congress's inability to alter them by retroactively amending the underlying statute.
>
> HUD also denies that Congress acted solely to save money. It argues that section 801 was enacted as a compromise to end litigation over the issue of the appropriate method for determining annual section 8 rent adjustments. HUD points to no authority permitting Congress to legislate a compromise to disputes involving vested property rights in order to prevent costly or wasteful litigation. HUD's argument again assumes the absence of any vested property right in annual formula rent adjustments, an issue that we have decided against it.
>
> HUD is unable to present any argument explaining section 801

as anything other than Congress's attempt to save resources and money by legislating a compromise of its disputes with the owners. We hold that these cases fall within the scope of Lynch and Perry, and that through section 801, Congress has attempted to reduce an obligation in order to save money. Although HUD and Congress do not recognize this obligation, it has been established by the final judgment in Rainier View. Therefore, we hold that section 801 unconstitutionally abrogates the owners' vested property rights in violation of the fifth amendment.

Since Section 801 was primarily an attempt to save money, it cannot withstand the scrutiny required by this Court and the Constitution for legislation which affects vested constitutional property rights. If Section 801 is allowed to stand, the property rights of Section 8 owners will be materially impaired. HUD characterizes the impairment of Section 8 property owners' rights as something less

than substantial. However, throughout HUD's Brief and other jurisdictional papers, it is apparent that Congress and HUD considered this impairment, in terms of dollars, a subject of great magnitude, ranging between a low of $2 million to a high of $2 billion, as stated by Secretary Kemp. While perhaps on a case-by-case basis the impairment would not be extraordinary in terms of dollars, the overall impairment of Section 8 project owners' property rights over the term of the Contracts by virtue of the Section 801 legislation is monumental indeed.

CONCLUSION

For the reasons stated herein, Amici Curiae submit that the judgment of the Ninth Circuit in these consolidated appeals should be affirmed.

Respectfully submitted.

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Appendix "A"
List of Amici Curiae

United Keetowah Associates, Ltd.; Cape Lacroix, II, A Missouri Limited Partnership; 17th Place Associates, an Illinois Limited Partnership; Cardinal Apartment, Inc.; Crescent Arms Associates; Nowata Gardens Apartments of Chickasha, Oklahoma, Inc.; Western Village Apartments, Ltd; Forest Glen Estates, Inc.; Castle Gardens Charitable Trust; The Atlantis Apartment, Inc.; Clyde B. Goldsmith, Bernard L. Lifshutz; Southwood Patio Homes; Feliciana, a Louisiana Partnership in Commendam; Concordia Limited Partnership; Alouette Limited Partnership; Tangi Village Limited Partnership; 3433 Tulane Ave., a Louisana Partnership in Commendam; Forest Towers, Oklahoma, a California Non-Profit Corporation; College Apartments, Inc.; Yale Village Charitable Trust; Sierra Manor, Inc.; Sunset Towers, Inc.;

Highland Park, Inc.; Gulfway Terrace, Incorporated; Robert W. Green; Hoover & Hoover, Ltd.; Hoover Development, Ltd.; Better Housing, Incorporated; Lipton Properties III, Ltd.; Tower Oaks Partnership; Robert W. Price, Sr.; Ted W. Price, Sr.; Robert W. Price, Jr.; Ted W. Price, Jr.; SASA Limited Partnership; Allen Market Lane Apartments Associates, a Missouri Limited Partnership; Blair School Apartment Associates; Hamilton Development Associates; Lindell Plaza Redevelopment Corporation; Minerva Place Apartments Associates, a Limited Partnership; O'Fallon Place Limited Partnership; O'Fallon Place Limited Partnership, Phase II; O'Fallon Place Limited Partnership, Phase III; Revive 103 Associates; West End Apartments Associates; Madison Village, Ltd.; Arthur P. Gorman and Robert H. Gardner; Vicksburg Village Limited; Ashley House

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Associates; Hyatt Manor Limited; Valley Hi Associates; Algood Manor, Ltd.; Kanis Properties, Ltd.; Asheboro Properties Ltd.; Athens Properties Ltd.; Bon Air Associates; Bridge Creek Properties Ltd.; Brooksfield Properties Ltd.; Calhoun Properties Ltd.; Cartersville Properties Ltd.; Lakeview Properties Ltd.; Columbia Properties Ltd.; Cumberland Properties Ltd.; Dunlap Properties Ltd.; Eastman Properties Ltd.; Fayetteville Properties Ltd.; Forest Creek Properties Ltd.; Forsythe Properties Ltd.; Greenwood Properties Ltd.; LaFollette Properties Ltd.; Loudon Properties Ltd.; Macon Properties Ltd.; Manning Properties Ltd.; Mauldin Properties Ltd.; Fitzgerald Housing Assoc. Ltd.; North Augusta Properties Ltd.; Park Lake Properties Ltd.; Pebblebrook Properties Ltd.; Pendleton Properties Ltd.; Pickens Properties Ltd.; Raleigh Properties Ltd.;

Richmond Properties Ltd.; Riverside Properties Ltd.; Idlewild Properties, Ltd.; Seneca Properties Ltd.; Sneedville Properties Ltd.; Thomaston Properties Ltd.; Waynesboro Properties Ltd.; Winston Properties Ltd.; Azalea Woods Ltd.; Marshall Arms Associates Limited; Virgil Eisenbiez; Lynn Oak Court Company; Cimarron Group, Inc.; Eastbrook, Limited; Payne-Lincoln Properties; Fox Ridge Cooperative Townhouses, Inc.; Cody Plaza, a Kansas Limited Partnership; Sullivan Hall Housing Partnership, a Missouri Limited Partnership; Friendship Manor Housing Partnership, a Missouri Limited Partnership; Massey Park Housing Partnership, a Missouri Limited Partnership; Northlawn Gardens Limited Dividend Housing Association, a Michigan Limited Partnership; Alabama Baptist Retirement Center d/b/a/ Clara Verner Towers Apartments; Lakeview Apartments,

Appendix "A"

Ltd.; Logan Apartments, Ltd.; Knights Manor, Incorporated; Leslie E. Salone d/b/a Universal Management; CMD Associates, Michigan Co-Partnership d/b/a JG Properties; Veard - Ottawa, Ltd.; Veard - Gassaway, Ltd.; Homes - Cases, Inc.; Waterside Estates, Lakeview Estates, Ltd; Terrill Commons, Ltd.; Veard - Parsons, Ltd; River Hill Limited; Terraced Park Limited; Princeton Park Apartments, Limited; Barron Builders and Management Company; Taven Apartments, a Limited Partnership; Columbia Apartments; Garden City Apartments Limited; Centrex North Redevelopment Corp.; Paul Tipps Enterprises #1; Holden House Associates, an Ohio Ltd. Partnership; Urban properties No. 2, a/k/a Holt Manor; Fairwood Manor Development Company; East Mall Associates; CASCO Associates; Urban Properties #1; Paul Tipps Enterprises #2; Carpenter's Associates; Paul Tipps

Enterprises #4; Belton Garden Associates; Blacherne Associates; Anthony Arms Associates; Academy Associates; Federal American Properties; Liberty Park Development Company; Logan Hill Associates; Meadow Village, Ltd.; Parkview Place Company; Penn Circle Tower Development Company; Jasper Housing Development Company; Savoy-Hoosier Associates; Southern Oaks Apartments, Inc.; Baytown Urban Development, Ltd.; Weyerbacher Terrace Associates; Henry Fredricks; Cane Gardens Ltd. Partnership; Princeton Park Ltd; River Hill Ltd.; Country Meadows Apartments; Terrace Park, Ltd.; F.L. Richards; Sanders Heights Apts., an Oklahoma Limited Partnership; Village DuLac, Inc.; National Church Residences of Buffalo, N.Y.; National Church Residences of Baltimore; National Church Residences of Middletown; National Church Residences of Gahanna; National

Appendix "A"

Church Residences of Sharpsburg, Pennsylvania, Inc.; National Church Residences of Ceredo, West Virginia, Inc.; National Church Residences of Bristol Village; West Virginia Homes Inc.; George Maharg; Jaycom Charitable Trust; Robert Pesa; Peterson Apartments, a Michigan Partnership; Branchwood Associates of Hardeeville; Baytree Associates of Ridgeland; Cambridge Association of Lamar; Spruce Pines Associates of Landrum; Tall Pines Associates of Loris; Walterboro Village Associates; Willow Oaks Associates of Cowpens; Amberly Apartments Associates; Eastpointe Apartments Associates; Ashwood Apartments Associates; Southfield Townhouses Associates; Kettering Square Apartments Associates; Woodview Manor Associates; Southmoor Associates; Lincoln Hills Development Corporation; Joseph Herzig and Barbara Herzig; Barton House

Appendix "A"

LDHA; Elizabeth Arms Limited Partnership; Broad River Limited Partnership; Parkwood South Limited Partnership; Bethlehem Village Limited Partnership; Profit Hills Limited Partnership; Whitney Young Terrace Limited Partnership; National Church Residences of Chillicothe, Ohio; and Roth-Helfman Associates, Ltd, a Michigan Limited Partnership